



May 14, 2009

Mr. Joe Tilghman  
Board Chairman  
Kansas Health Policy Authority  
10205 Bond  
Overland Park, KS 66214

Dear Mr. Tilghman:

MatrixPointe has completed its review of the extraordinary funding for developmental disability services provided to 43 Medicaid beneficiaries by the Community Living Opportunities of Lenexa, Kansas. The specific funding in question relates to the "special rates" that were established effective November 1, 2008 by the Secretary of the Department of Social and Rehabilitation Services for the 43 beneficiaries. The approximate annualized amount of this increased funding is projected to total \$713,000 (i.e. \$285,000 State General Funds and \$428,000 Federal funds).

The results of our review are presented in the attached report. In summary, the report demonstrates that the Secretary had sufficient authority within Kansas statute, regulations and approved Medicaid waiver to make the extraordinary funding payments. We could not, however, find acceptable source documentation that supported the Secretary's determination that the 43 beneficiaries were eligible for the extraordinary funding. Therefore we recommend that extraordinary funding eligibility for all 43 cases be reevaluated and documented. To assure consistent application of the extraordinary fund criteria we also recommend that the State consider rescinding the delegation for approving future extraordinary funding requests to the Community Developmental Disability Organizations.

MatrixPointe thanks you for the opportunity to assist the Kansas Health Policy Authority in this matter. Please contact Thomas W. Lenz at 816-289-0022 or me at 402-326-1648 if you have questions or need clarification on the contents of the report. Also, please feel free to contact us if you have additional matters that MatrixPointe is uniquely qualified to provide assistance.

Robert J. Seiffert  
Chief Executive Officer  
MatrixPointe, LLC

Attachment

Review of the Department of Social and Rehabilitation Services

Extraordinary Funding Decision

For the Community Living Opportunities

Lenexa, Kansas

May 14, 2009

## **Background**

MatrixPointe, a Limited Liability Company (LLC) specializing in providing health care consulting services, was engaged by the Kansas Health Policy Authority to conduct an independent review of the determinations made by staff of the Kansas Department of Social and Rehabilitation Services (DSRS) to assure compliance with the policies established for developmentally disabled client extraordinary funding eligibility. The specific funding in question related to the "special rates" that were established effective November 1, 2008 by the Secretary of the DSRS for 43 beneficiaries served by the Community Living Opportunities of Lenexa, KS. The approximate annualized amount of this increased funding is projected to total \$713,000 (i.e. \$285,000 State Funds and \$428,000 Federal).

The DSRS administers a Section 1915 (c) Medicaid waiver that provides services to eligible children and adults. The purpose of the waiver is to provide the opportunity for innovation in providing Home and Community Based Services (HCBS) to persons who would otherwise require institutionalization in an intermediate care facility for the mentally retarded. Consistent with the KS Developmental Disabilities Reform Act of 1995 the goals and objectives of the waiver center around providing access and supports which allow for opportunities and choices that increase independence, productivity, integration and inclusion in the community. The range of services and supports must be appropriate to each person and must be provided in a manner that affords the same level of dignity and respect to the clients that would be afforded to any person who does not have a disability.

DSRS contracts with 27 Community Developmental Disabilities Organizations (CDDOs) to coordinate these services and supports for the approximately 10,000 (7,300 Medicaid eligible) adults and families served in community settings. DSRS also contracts with approximately 300 providers that provide the specific services that are approved in the client's plan of care. Total annual waiver expenditures for fiscal year 2009 are approximately \$285,000,000 (i.e. \$114,000,000 state and \$171,000,000 Federal).

In performing this review we obtained and analyzed all relevant statutes, regulations, policy pronouncements, contracts, agreements and the Federally approved Medicaid waiver materials. To obtain further clarification on the appropriate interpretation of this guidance we interviewed staff at the DSRS, the Health Policy Authority, the Community Living Opportunities and three of the four CDDOs.

## **Review Results**

We reviewed the applicable sections of the Kansas State Statutes and Regulations as well as the approved Medicaid waiver to determine the authority and process for payments for services provided to the developmentally disabled. This review showed that the Kansas Statutes define the Secretary's broad authority to develop programs and payment plans in fulfilling the intent of the KS Developmental Disabilities Reform Act and Federal laws. Kansas regulations at 30-5-79(c) provide the following clarity: "Reimbursement for home and community based services for persons with mental retardation or other developmental disabilities shall be based upon reasonable fees related to customary charges, except that no fee shall be paid in excess of the range maximum".

Specific guidance on how providers are to be reimbursed for services was found in the approved 1915(c) Medicaid waiver. In this regard Appendix I-2 states: "Throughout the history of the Kansas HCBS-MR/DD waiver, Kansas has used tiered rates to reimburse providers of many waiver services including day and residential supports... Providers are reimbursed specific amounts for the specific services provided based on the person's tier as determined by the BASIS assessment instrument. For those occasional circumstances when the costs to support a person are extra-ordinary, and in an effort to financially support the provider in it's effort to assure the health and welfare of the participant, the State has developed a tool to measure the extraordinary need, and has the flexibility to reimburse the provider at an extraordinary tiered rate or an individualized rate."

Based on our review of the applicable Kansas statutes, regulations and approved Medicaid waiver we believe the Secretary was authorized to make extraordinary funding payments to the Community Living Opportunities on behalf of the 43 clients.

We then reviewed all guidance on how eligibility for the extraordinary funding referenced in the waiver was to be determined and all available documentation to support the extraordinary funding payments made on behalf of the 43 clients. The specific guidance reviewed included (i) a Health Care Provider/Community Developmental Disabilities Organization (HCP/CDDO) Policy regarding extraordinary funding for HCBS Services, (ii) the extraordinary funding assessment tool, (iii) the extraordinary funding eligibility determination training guide developed by the Johnson County Developmental Supports and (iv) the contract between the DSRS and the CDDOs.

The latest HCP/CDDO policy regarding extraordinary funding (copy included with this report) provides the clearest guidance. While this policy has a draft date of April 26, 2007 it has been utilized by DSRS since the responsibility for making the extraordinary determination decisions was delegated contractually to the CDDOs. In summary this policy statement:

- directs that a person's eligibility for extraordinary funding (EF) will be determined by the results of the uniform tool recommended by the EF

workgroup in a final report dated March 2006 and agreed to by SRS and the CDDOs as part of the FY07 contract.

- prescribes a schedule for initial assessments of EF need as well as ongoing reassessments of the continuing need for the individuals receiving services reimbursed at the EF level.
- outlines a provider's right to request an independent review of adverse determinations.
- requires each CDDO to develop local protocols that include timelines for submission of information to be used for the determination of need for EF.
- outlines procedures for establishing and managing a waiting list for extraordinary funding.

The extraordinary funding assessment tool and training guide outline a detailed process for aligning a client's plan of care and the supports necessary to meet that plan with the cost of providing the necessary services. A cost per day is then established and compared with the standard and special tier (EF) rates contained in the CDDO contract with SRS to determine the appropriate payment level.

Utilizing the guidance outlined above we then reviewed all available documentation and interviewed staff at the DSRS, the Community Living Opportunities and three of the four affected CDDOs to determine if the extraordinary funding payment decisions for the clients were appropriately supported. In discussions with staff at the DSRS we determined that the prescribed process was not followed. DSRS staff, rather than staff from the CDDOs, conducted the reviews and made the eligibility determinations. In performing the reviews we also found that DSRS staff did not utilize the prescribed assessment tool and they did not utilize other standardized criteria in reviewing the cases to establish extraordinary funding eligibility. Staff indicated that they reviewed the documentation presented by the Community Living Opportunities for 58 clients it believed were eligible for extraordinary funding and ultimately found that 43 of the clients were eligible.

We, therefore, visited the Community Living Opportunities to gain its perspective on the extraordinary funding process and to review the documentation that it presented to support the extraordinary funding requests. Our cursory review of the documentation showed that it clearly did not establish client eligibility. Specifically, there was no attempt at aligning the plan of care with the necessary supports and then compare the cost of those supports with the prescribed payment rates. We also found that DSRS staff was overriding the annual reassessment determinations made by the CDDOs by increasing the standard rate as recommended by the CDDOs to the special tier rate i.e. the EF rate.

In summary, our review showed that the Secretary of the DSRS had sufficient authority within Kansas statute, regulations and the approved Medicaid waiver to make the extraordinary funding payments. We could not, however, find acceptable source documentation that supported the Secretary's determination that (i) the 43 beneficiaries were in fact eligible for the extraordinary funding or (ii) eligibility for the extraordinary funding continued based on the required annual reassessment.

### **Recommendation**

Based on our review of the DSRS staff determinations relating to the extraordinary funding decisions made on behalf of 43 clients served by the Community Living Opportunities we recommend that the State of Kansas:

- conduct a complete redetermination of all 43 clients' eligibility for the extraordinary funding utilizing the prescribed assessment tool and process i.e. the Community Living Opportunities would complete the assessment tool and submit the request to the appropriate CDDO for approval. The Community Living Opportunities would then be able to seek reconsideration of any adverse decision through the existing administrative appeals process.
- consider rescinding the current delegation to the CDDOs the responsibility for approving extraordinary funding requests. This would assure consistent application of the criteria and therefore equitable treatment of all future requests.

## **HCP/CDDO Policy**

**Regarding:** Extraordinary Funding for HCBS Services

**Draft Date:** April 26, 2007

**Revision Dates:** Draft Revisions written June 11, 2008

**Implementation Date:** March 1, 2009

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**Policy Language:** The State of Kansas Department of Social and Rehabilitation Services, Division of Disability and Behavioral Health Services - Community Supports and Services (SRS/DBHS-CSS) recognizes that a small percentage of persons served through the Home and Community Based Services waiver for persons with Mental Retardation and/or Developmental Disabilities (HCBS-MR/DD) need an extraordinary level of funding to support their health and welfare needs while they are receiving waiver supports. It is the policy of SRS/DBHS-CSS to, within available funding, reimburse the providers of services to these identified persons at an extraordinary rate.

### **Procedures:**

1. A persons' eligibility for Extraordinary Funding (EF) will be determined by the results of the uniform tool recommended by the EF Work Group in their final report dated March 2006, and agreed to by SRS and CDDOs as part of the FY07 contract and for which all CDDO's received training during the first quarter of FY07 (and any subsequent training updates). It is the responsibility of the CDDO to complete all EF determinations in a manner consistent with the time lines specified in this policy and the training provided by SRS. CDDOs have the discretion to determine who will review the results of assessments and ultimately determine whether or not to recommend to the State a request for EF on behalf of a person. A copy of the uniform tool is available on the DBHS-CSS website.

2. Effective July 1, 2007 individuals whose services are currently reimbursed with EF will be reassessed on a schedule based on the following criteria;

a) Persons whose services have been reimbursed with EF for at least five consecutive years, and who's Fiscal Year (FY) 2007 assessment identified a continued need for EF will, in the future, be reassessed every three fiscal years during the persons' birth month.

b) All other person's who are initially determined eligible and whose services were reimbursed with EF during any portion of FY07 or thereafter will be reassessed annually, during the persons' birth month for the continued need for EF until they have been identified to have a need for EF for five consecutive years, and then will be reassessed consistent with local CDDO protocol but within every three fiscal years.

c) In the event a person has been approved for EF at different times for different services, the person will be reassessed for the need for EF for each service consistent with a and b above. For example, if a person has been receiving EF for residential services for six years and is determined to still need EF, then the next review for residential services would be in three years. If the same person had only been approved for EF for day services for one year, then the continued need would be reviewed annually until the person had been determined eligible for five consecutive years.

3. If, based on the uniform tool, a person is determined to no longer be eligible for EF, the person's EF will be reduced to the regular tier rate effective the first day of the month after the review was due to be completed.

4. Community Service Providers can request an assessment for eligibility for EF for additional persons who have been served for at least 90 days. The CDDO and CSP will collaborate to complete the assessment in a manner consistent with local CDDO policy.

***Specific criteria for providers requesting EF for persons they have served for less than ninety days:***

In certain circumstances providers may be able to demonstrate a need for EF prior to having served the person for at least 90 days. For those situations when a provider is approved for EF prior to having served the person for at least 90 days, the provider will be required to provide the CDDO updated financial information and a written summary as to the status of the supports being provided on a quarterly basis for the first full year. Continuation of EF is based on the CDDOs' approval of the information provided.

5. Should a CDDO determine that a person is ineligible for the funding through the use of the tool, the CSP can request that another CDDO do a full review of the documentation. The CSP may request that the reviewing CDDO also complete the staff interview process as a part of its review.

6. Each CDDO will develop local protocols that include timelines for submission of information to be used for the determination of need for EF. These local protocols may include language that states that a Community Service Providers' failure to submit required information consistent with the local protocol timelines will result in the reimbursement for the person to be returned to the regular-tiered rates.

7. Providers are encouraged to voluntarily relinquish extraordinary funding rates for persons who's needs have changed and no longer require a level of supports that would justify reimbursement at an extraordinary level. If the provider voluntarily relinquishes EF for a person and, if during the time period for which the person has been approved for EF reimbursement, that persons' support needs once again increase to an EF level, the provider can request and will immediately be granted EF for previously approved services through the previously approved time period.



**Specific criteria applying to persons who move from one CDDO area to another CDDO area or who change service providers:**

If a person for whom a Community Service Provider is receiving EF reimbursement moves from his/her current CDDO area to another CDDO area, or changes Community Service Providers within the CDDO area, then the current CDDO must do a review, which may include a new assessment packet, to re-determine the need for continued EF after 60 days, but within 90 days of the persons' move.

**Waiting List for Extraordinary Funding:**

On October 1, 2006, DBHS/CSS began managing a separate HCBS allocation to fund EF for new persons for whom a CSP has requested EF. The allocation pool consists of dollars that become available when persons who are using EF no longer have a need or are determined to no longer have the support needs to meet the EF criteria. Also, DBHS/CSS began maintaining a waiting list of persons newly determined eligible for EF on October 1, 2006.

A person's position on the waiting list for EF is determined by;

8. The availability of funding in the EF pool.
9. The scoring table – Priorities 1 through 4 are given equal weight. Priorities 5 and 6 are given subsequent priority if EF is still available.
10. In the event more than one person has the same priority scale rating (based on #2), the individual with the earliest submitted date to DBHS-CSS would receive the EF. If more than one person has the same priority status and they also share the same request date, then a random number generator will be used to determine each persons' place on the waiting list.
11. DBHS/CSS will notify the CDDO when EF has become available for a person in its' CDDO area.
12. Persons' waiting for access to EF must have their needs re-evaluated annually during their birth month. The CDDO will notify DBHS/CSS as to the results of the re-evaluation.

**Notification regarding Extraordinary Funding Need;** The EF Notification Form will be the primary method of communicating the changes for EF need within each CDDO area to DBHS-CSS. EF Notification Forms should be sent to DBHS-CSS within 14 days of the following;

- The date a person is determined eligible/ineligible for EF or a continuation of EF.
- The date a person who has EF will no longer need the funding.

May 15, 2009

Mr. Robert Seiffert  
Chief Executive Officer  
MatrixPointe, LLC  
6420 Cannondale Court  
Lincoln, NE 68516

Dear Mr. Seiffert:

We have reviewed your draft report, regarding SRS's extraordinary funding decisions involving 43 people receiving services through Community Living Opportunities. We appreciate the work you did in understanding the core features of our community-based developmental disabilities service system, and the wide range of services and supports provided to Kansans through that system.

We agree with your fundamental conclusion that we had the authority within existing state and federal laws, regulations and approved Medicaid waiver provisions, to make extraordinary funding payments. We also are ready, willing and able to receive and implement your recommendation that SRS ensure a complete redetermination of the extraordinary funding decisions involving those individuals.

More specifically: SRS will have redeterminations completed for each of the 43 individuals utilizing the prescribed assessment tool and process. This process will receive focused attention, and will be completed as soon as is feasible.

In addition, in the draft report there is a reference to SRS's policy regarding extraordinary funding having "a draft date of April 26, 2007." We agree that the heading language on that policy, while attempting to capture the developmental and amendment history, leaves some lack of clarity. This is indeed the final policy that is being utilized for extraordinary funding. SRS will make the necessary changes to the policy so that it clearly indicates it is not a draft policy. This will be completed within the next 14 days.

We appreciate the opportunity to participate in your review process, and to comment on your draft report.

Sincerely,



Don Jordan  
Secretary

OFFICE OF THE SECRETARY

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